

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 210 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

UMESHBHAI PRABHASHANKAR MEHTA

Versus

ASHOKBHAI MUSHIRAM ANAND

Appearance:

1. Civil Revision Application No. 210 of 2003
MR AMAR D MITHANI for Petitioner No. 1
RULE SERVED for Respondent No. 1,5
RULE NOT RECD BACK for Respondent No. 2
MR KK NAIR for Respondent No. 3
DELETED for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/08/2004

ORAL JUDGEMENT

The petitioner above named has preferred this revision application under section 115 of the Code of Civil Procedure, 1908 challenging an order of apportionment made by the learned Motor Accident Claims Tribunal (Main) (for short, 'the Tribunal') at Junagadh dated 31.1.2000 in MAC Petition No.933 of 1991.

2. It seems that the petitioner was the original claimant before the learned Tribunal. The said tribunal disposed of the petition and awarded compensation. The award is not in dispute. However, an application was submitted to the said tribunal for apportionment of liability. The learned tribunal passed an order for apportionment of liability between two tortfeasors. The said order in question reads as under:

"Heard the learned Advocates today. The application is hereby granted. The necessary amendment be made for fixing liabilities 70% of 1,2 and 3 and 30% of 4 and 5."

3. It seems that on receiving the petition, rule was issued and in response to the notice of rule, Mr K K Nair, learned Advocate appears on behalf of respondent no.3. Respondent no.2 has not been served and the learned Advocate for the petitioner seeks permission to withdraw the revision application against respondent no.2 as he is a driver. Permission granted. This revision stands dismissed against respondent no.2 as withdrawn. Respondent no.4 has already been deleted.

4. I have heard the learned Advocate for the petitioner and learned Advocate appearing for the Insurance Company. I also perused the orders. It is very clear that so far as the first order dated 31.1.2000 is concerned, the learned Tribunal has granted award in favour of the petitioner and against the respondents. However, by the aforesaid order dated 5.4.2000, the learned Tribunal has apportioned liability between two tortfeasors at 70% and 30% respectively.

5. It is also required to be considered that the execution petition has been dismissed on the aforesaid ground of apportionment of liability between two tortfeasors.

6. Learned Advocate for the petitioner has argued that so far as the apportionment of liability is concerned, it is a matter inter se between two or more tortfeasors. It is also his argument that so far as the

claimants are concerned, liability would be jointly and severally and that therefore, the petitioners cannot be directed to recover 70% of the awarded amount from one tortfeasor and 30% from the remaining tortfeasor.

7. Learned Advocate for the Insurance Company has argued that apportionment has been made after hearing the parties. Therefore, it would not be proper to change the said decision by exercising revisional jurisdiction of this Court.

8. Now it is well settled that when two tortfeasors have been joined in a petition and when the award has been passed against all of them holding their joint and several liability and responsibility, then it would be open to the petitioner to recover the amount from any one or more tortfeasors. Even if the apportionment made is with respect to the liability, the petitioner would still be entitled to recover whole or part of the awarded amount from one or more tortfeasors as per his option and choice. One of the tortfeasors cannot say that he would pay only to the tune of apportionment against him and would not pay the remaining amount.

9. On this aspect of the case, learned Advocate for the petitioner has relied upon a decision of this Court in the case of Amarsi Jugabhai & Ors. v. Vijayaben Hemantlal Dhulia & Ors., reported in 1996 (1) GLH 1007. There it has been observed that wrong doers are deemed to be joint tortfeasors where cause of action against each of them is same. It has also been observed therein that even a decree passed against such joint tortfeasors can be executed against any one of them for the whole amount. It has further been observed that liability of the tortfeasor is joint and several. Similar view can be gathered from a decision in the case of Bhanuben Joshi & Ors. v. Kantilal B Parmar & Anr., reported in 1994 ACJ 714.

10. At the same time, it is required to be considered that when an award has been passed against two or more tortfeasors and when apportionment of liability is made, then one joint tortfeasor will be at liberty to recover the amount paid by him but which he was not liable to pay according to the apportionment the amount can be recovered by him from the joint tortfeasor. In this connection, we can refer to proviso to section 147 (4) of the Motor Vehicles Act, 1988. On this aspect of the case, we can refer to a decision of the Supreme Court in the case of M/s.National Insurance Co.Ltd. v. Baljit Kaur & Ors., reported in JT 2004 (1) SC 15. The

observation made in concluding para may be reproduced for ready reference:

"For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceedings."

11. In above view of the matter, it is clear that the petitioner is entitled to full amount from any of the joint tortfeasors and, therefore, the order passed by the Executing Tribunal dismissing the execution petition of the petitioner against the Insurance Company for the recovery of the entire amount on the ground that as per the apportionment order, the Insurance Company is not responsible to pay more than 70% of the total amount, is required to be set aside.

12. For the foregoing reasons, this revision application is allowed. The order passed by the learned Executing Tribunal dismissing the execution petition of the petitioner is set aside. The Executing Tribunal will proceed ahead with the Execution Petition of the petitioner and shall decide and dispose of the same in accordance with law and in background of the observations made hereinabove. It is made clear that if the respondent-Insurance Company pays to the claimants any amount in excess of the liability of apportionment against it, then it would be open to the said Insurance Company to recover the same from the owner or driver of other vehicle involved in the said accident.

Rule is made absolute to the aforesaid extent. No order as to costs.

[D P Buch, J.]

msp